

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

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FISCAL IMPACT STATEMENT

LS 6596
BILL NUMBER: SB 223

NOTE PREPARED: Dec 14, 2020
BILL AMENDED:

SUBJECT: Marijuana Legalization.

FIRST AUTHOR: Sen. Tallian
FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill provides that a person who knowingly or intentionally possesses more than two ounces of marijuana commits the offense of possession of marijuana. (Current law provides that the offense of possession of marijuana can be for any amount of marijuana.) It repeals the offense of possession of marijuana, hash oil, hashish, or salvia as a Level 6 felony. It makes conforming amendments.

Effective Date: July 1, 2021.

Explanation of State Expenditures: *Repealer* – This bill would have a minimal effect on DOC’s offender population.

OFMA examined the records of 1,374 persons who were convicted and sentenced for possession of marijuana as a Level 6 felony between January 1, 2014, and June 30, 2020. OFMA found that 5.5% of these persons received an executed sentence of 453 days to be served in a DOC facility.

The average expenditure to house an adult offender in a DOC facility was \$21,551 annually, or \$59 daily, during FY 2020. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is estimated at \$3,524 annually, or \$9.66 daily, per prisoner. These marginal cost estimates are based on contractual agreements with food and medical vendors and projections based on prior years for clothing and hygiene. The estimated average cost of housing a juvenile in a state juvenile facility was \$89,998 annually, or \$246.40 per day, in FY 2020. The marginal cost for juvenile facilities was \$3,969 annually or \$10.87 daily.

Explanation of State Revenues: *Possession of Marijuana* – If fewer court cases occur and less fines are collected, revenue to both the Common School Fund and the state General Fund would decline. The maximum fine for a Level 6 felony is \$10,000. Criminal fines are deposited in the Common School Fund. Because no information is available on the weight of the marijuana in each misdemeanor case, OFMA cannot determine a definitive revenue loss.

There would also be a slight decline in other fees as well. If the case is filed in a circuit or superior court, 70% of the \$120 criminal costs fee that is assessed and collected when a guilty verdict is entered is deposited in the state General Fund. In addition, some or all of the following revenue is deposited into the state General Fund: Automated Record Keeping Fee (\$20), Judicial Salaries Fee (\$20), Public Defense Administration Fee (\$5), Court Administration Fee (\$5), Judicial Insurance Adjustment Fee (\$1), and the DNA Sample Processing Fee (\$3).

In addition, persons convicted of a drug-related offense may also be liable for a Drug Abuse, Prosecution, Interdiction and Correction Fee ranging between \$200 and \$1,000. The revenue collected from this fee is deposited in the State User Fee Fund and distributed to state and local programs.

Explanation of Local Expenditures: *Summary* – This provision would likely reduce the costs to counties for public defense and the pretrial jail population. Because no information is available on the weight of the marijuana in each felony case, OFMA cannot determine a definitive savings.

Pretrial Confinement – This bill could reduce the pretrial county jail population. Of the records examined, 88% of persons who were convicted and sentenced for possession of marijuana as a Level 6 felony were confined in a county jail pretrial.

Supervision Post Trial and Prison – Persons who are convicted and sentenced for this Level 6 felony are more likely to be supervised either after trial or after being released from prison. Of the persons that OFMA found, 85% were supervised by a community corrections agency, a probation department, or both.

The average cost per day is approximately \$54 based on the per diem payments reported by U.S. Marshals to house federal prisoners in 16 county jails across Indiana during federal FY 2017.

Explanation of Local Revenues: If fewer guilty verdicts are entered, local governments would receive less revenue from the following sources. The county general fund receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Because no information is available on the weight of the marijuana in each felony case, OFMA cannot determine a definitive revenue loss.

There would also be a slight decline of other fees as well. Persons found guilty of a felony or misdemeanor are also required to pay the document storage fee (\$5), which is deposited into the clerk record perpetuation fund, and the jury fee (\$2) and the law enforcement continuing education fee (\$4), which are both deposited in the county user fee fund.

In addition, if a person is convicted of a drug-related offense, a sentencing court may assess a marijuana eradication program fee of not more than \$300, if the county has established a Weed Control Board. The court may also assess an alcohol and drug services program fee of not more than \$400 if a local government

has approved the establishment of an alcohol and drug services program. Revenue collected from the Marijuana Eradication Program Fee is deposited into the county user fee fund. Revenue collected from the Alcohol and Drug Services Program Fee is deposited in the county or city or town user fee fund.

State Agencies Affected: Department of Correction.

Local Agencies Affected: Trial courts; local law enforcement agencies.

Information Sources: Indiana Sheriffs' Association; Indiana Supreme Court Abstracts of Judgment; Department of Correction; U.S. Department of Justice Marshals Service.

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